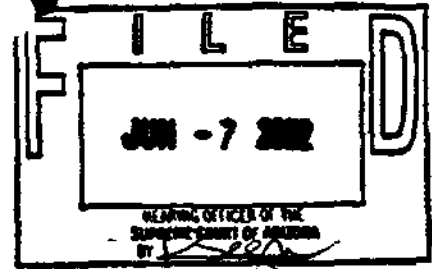


1 Robert J. Lord, Bar No. 011911
2 Hearing Officer
3 7047 East Greenway Parkway, Suite 140
4 Scottsdale, Arizona 85254
5 (480) 624-2779



6 **BEFORE A HEARING OFFICER**

7 IN THE MATTER OF A SUSPENDED) No. 00-2552
8 MEMBER OF THE STATE BAR OF ARIZONA,)
9)
10 **CLIFFORD G. COZIER,**)
11 **Bar No. 015010**)
12)
13 **RESPONDENT.**)

14 **HEARING OFFICER'S REPORT**
15 **AND RECOMMENDATION**

16 **PROCEDURAL HISTORY**

17 On August 27, 2001, a Probable Cause Order was entered finding that probable cause
18 existed to issue a complaint against Respondent for violations of Rule 42, Ariz.R.S.Ct. including,
19 but not limited to ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 1.16, ER 8.1(b) and Rule 51(h) and (i).
20 On December 18, 2001, the State Bar of Arizona ("State Bar") filed a Complaint against
21 Respondent. The Complaint contained two (2) counts. Count One alleged misconduct arising
22 from the Respondent's representation of his client as set forth above. The Ethical Rules charged
23 in Count One were ER 1.1, ER 1.2, ER 1.3, ER 1.4, and ER 1.16(d). Count Two alleged that
24 Respondent failed to cooperate with the State Bar's investigation. The Ethical Rules charged in
25 Count Two were ER 8.1(b) and Rule 51(h) and (i).

26 On January 17, 2001, the Disciplinary Clerk filed a Notice of Default, pursuant to Rule
27 53(c)(3). On February 6, 2002, the Disciplinary Clerk filed the Entry of Default against
28 Respondent. The allegations in the Complaint are therefore deemed admitted. Thus, the
determination of the appropriate sanction is the only issue at hand.

1 FINDINGS OF FACT

2 At all times relevant hereto, Respondent was a member of the State Bar, having
3 originally been admitted to practice on October 23, 1993. Respondent was summarily suspended
4 for nonpayment of dues on April 20, 2001, and remains suspended. Krista Lynn Collins
5 ("Complainant") retained Respondent to represent her in the probate of her mother's Estate. On
6 June 23, 1999, Respondent filed on behalf of Complainant a Petition for Adjudication of
7 Intestacy, Determination of Heirs, and Appointment of Personal Representative. The case
8 number of the probate matter is PB99-90537. The Petition stated that the whereabouts of the
9 decedent's son, James Collins, Jr., was unknown. Although prior to the filing of the June 23,
10 1999 Petition, Respondent was aware of a lost holographic Will, purportedly signed by the
11 decedent, the Petition states that "[a]fter the exercise of reasonable diligence, Petitioner is
12 unaware of any unrevoked testamentary instrument executed by decedent relating to property
13 having a situs in this state."
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16 On September 28, 1999, the probate court heard the testimony of Complainant and the
17 testimony of Royal W. Sanders and determined that the whereabouts of James Collins, Jr., were
18 unknown and had been unknown since approximately 1985. Based on the Petition filed by
19 Respondent and the testimony heard by the court on September 28, 1999, Complainant was
20 appointed the Personal Representative of her mother's Estate on November 1, 1999.
21 Additionally, the Court declared that James Collins, Jr., was deceased pursuant to A.R.S. § 14-
22 1107(5). Because Complainant was declared the sole heir of the decedent, she was not required
23 to post a bond. The court also determined that the decedent had died intestate.
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25 On May 1, 2000, Louie Carrasco, Esq., filed a Notice of Appearance on behalf of James
26 Collins, Jr. in PB99-90537. On or about May 1, 2000, counsel for James Collins, Jr., filed a
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1 Request for Bond with the probate court in an amount not less than \$150,000.00. Also on May
2 1, 2000, counsel for James Collins, Jr., filed with the probate court an Objection to
3 Determination of Heirs; Motion for Reconsideration and Redetermination of Heirs. The Motion
4 filed by counsel for James Collins, Jr. demonstrated that Mr. Collins was not missing, that he had
5 maintained the same mailing address in Tempe since 1984, and had, with minor exceptions, been
6 a resident of Arizona since approximately 1973.
7

8 On July 7, 2000 the probate court vacated the previous order finding Complainant to be
9 the sole surviving intestate heir of her mother's Estate, and finding that James Collins, Jr., was
10 another intestate heir of the Estate. The probate court's order of July 7, 2000, required
11 Complainant to file an inventory and appraisal, file an interim accounting, and either post a
12 bond in the amount of \$50,000 or file a proof of restricted account showing that the house sale
13 proceeds were deposited in an interest bearing account from which no withdrawals of principal
14 or interest could be made without prior court approval by July 20, 2000.
15

16 On July 19, 2000, Respondent filed a Request for Extension of Time to comply with the
17 probate court's order of July 7, 2000. On July 27, 2000, Respondent filed a Petition for Formal
18 Probate of Lost or Destroyed Will with the probate court requesting that the lost holographic
19 Will, referred to in Paragraph 3 hereof, be probated. This Petition is signed by Complainant, and
20 dated July 5, 2000.
21

22 On August 11, 2000, counsel for James Collins, Jr., filed a Motion to Expedite Hearing
23 because Complainant had, as of that date, failed to comply with the probate court's order of July
24 7, 2000. Also on August 11, 2000, counsel for James Collins, Jr., filed a Petition for Removal of
25 Personal Representative, seeking to remove Complainant as the Personal Representative of the
26 Estate of their mother.
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1 On November 16, 2000, the probate court held the hearing on James Collins, Jr.'s
2 Petition for Removal of Personal Representative and Motion to Dismiss Petition for Formal
3 Probate of Lost or Destroyed Will. Neither Respondent nor Complainant appeared at the
4 November 16, 2000, hearing, and the probate court found there was no good cause shown for the
5 continuance of the hearing. On November 17, 2000, the probate court filed an Order Removing
6 Personal Representative, and granted James Collins, Jr.'s Motion to Dismiss Petition for Formal
7 Probate of Lost or Destroyed Will. The order was dated November 16. The November 16, 2000
8 order finds that Complainant filed no opposition to the August 11, 2000 Petition for Removal.
9 The November 16, 2000 order finds that Complainant and Respondent signed pleadings in
10 violation of Rule 11(a) and had brought claims without substantial justification. The November
11 16, 2000 order also sanctioned Complainant and Respondent for their conduct. The sanction
12 imposed was payment of expenses and reasonable attorney's fees incurred by James Collins, Jr.
13 in bringing about the reversal of the court's ruling that he was deceased and not an heir to the
14 Estate of his mother.
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17 On December 1, 2000, Respondent authored and mailed a letter to Complainant
18 purporting to "update her with respect to matters of the Estate of your mother, Theresa Maria
19 Collins." The December 1, 2000, letter stated that:

20 [t]he Court, on November 16, 2000, elected to decide the pending matters
21 on briefs as opposed to setting a hearing on respective issues involving
22 the will contest and challenge to your role as P.R.

23 The December 1, 2000, letter also stated that:

24 [t]he Court decided the matters in favor of Jim Collins, and has ordered
25 that Jim be appointed successor P.R. in your mother's estate. The Court
26 has further granted the Motion to Dismiss the Petition for Administration
27 of the lost holographic will, and has ordered an internal review and report
28 by December 29, 2000.

1 The December 1, 2000, letter also stated that Respondent:

2 will be filing a Motion to Reconsider. However, given the status of the
3 lost Will as well as the circumstances surrounding the value of the home
4 and the restricted bank account concerning the proceeds of 1/2 of the sale
5 of the home, I am, at this point, not hopeful that a Motion to Reconsider
6 will be successful.

7 On January 29, 2001, Respondent's representation of Complainant was terminated by
8 court order. Respondent failed to timely surrender the file to new counsel after his representation
9 of Complainant was terminated by court order. Respondent never told Complainant that he
10 failed to file a Response to the Petition for Removal. Additionally, Respondent failed to
11 adequately advise his client, Complainant, of the probate court's order of July 7, 2000 requiring
12 her to file an inventory and appraisal, file an interim accounting, and either post a bond in
13 the amount of \$50,000 or file a proof of restricted accounting showing that the house sale
14 proceeds were deposited in an interest bearing account from which no withdrawals of principal
15 or interest could be made without prior court approval by July 20, 2000.

16 Respondent also failed to advise his client, Complainant, of the request by opposing
17 counsel to turn over the assets of the Estate in her possession as well as all financial records of
18 the Estate to the successor Personal Representative. Respondent failed to provide competent
19 representation to his client, failed to consult with his client as to the means by which the
20 objectives of the representation were to be pursued, failed to act with reasonable diligence and
21 promptness in representing his client, failed to keep his client reasonably informed about the
22 status of her case; failed to take reasonably practicable steps to protect his client's interests after
23 his representation ended.

24 In response to the State Bar's inquiry letters of January 26, 2001 and February 22, 2001,
25 Respondent wrote a letter dated March 6, 2001 requesting a one (1) week extension to file his
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1 response. Bar Counsel Guy Fimbres granted the request. Bar Counsel called Respondent in late
2 March or April, 2001, and was told by Respondent that the response was forthcoming. On June
3 28, 2001, the State Bar made a final request for information and informed Respondent that a
4 failure to respond would likely result in issuance of a Probable Cause Order. No response or
5 communication of any kind was ever received by the State Bar since the final request of June 28,
6 2001.
7

8 CONCLUSIONS OF LAW

9 To the extent any of the foregoing findings of fact constitute conclusions of law, they are
10 hereby incorporated herein by reference. Pursuant to Rule 53(c)1, Ariz.R.S.Ct., the allegations
11 in the Complaint are deemed admitted. Thus, the determination of the appropriate sanction is the
12 only issue at hand. Respondent's conduct violated the following ethical rules: ER 1.1, ER 1.2,
13 ER 1.3, ER 1.4, ER 1.16(d), ER 8.1, and Rule 51(h) and (i).
14

15 ABA STANDARDS

16 ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty violated;
17 (2) the lawyer's mental state and (3) the actual or potential injury caused by the lawyer's
18 misconduct; and (4) the existence of aggravating or mitigating factors.

19 This Hearing Officer considered *Standard* 4.0 (Violations of Duties Owed to Clients) and
20 *Standard* 7.0 (Violations of Other Duties Owed as a Professional) in determining the appropriate
21 sanction warranted by Respondent's conduct. Specifically, *Standard* 4.52 (Lack of Competence)
22 provides that: "Suspension is generally appropriate when a lawyer engages in an area of practice
23 in which the lawyer knows he or she is not competent, and causes injury or potential injury to a
24 client." Respondent knowingly engaged in an area of practice he was not competent in and
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1 caused potential injury to his client (ER 1.1). *Standard 4.42 (Lack of Diligence)* provides that:

2 "Suspension is generally appropriate when:

- 3 (a) a lawyer knowingly fails to perform services for a client and causes injury or
4 potential injury to a client; or
5 (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a
6 client."

7 Respondent knowingly failed to perform services and engaged in a pattern of neglect that caused
8 potential injury to his client (ER 1.2, ER 1.3, ER 1.4).

9 *Standard 7.2* states that: "Suspension is generally appropriate when a lawyer knowingly engages
10 in conduct that is a violation of a duty owed as a professional, and causes injury or potential
11 injury to a client, the public, or the legal system. Respondent knowingly engaged in conduct that
12 is a violation of his duty owed as a professional and caused potential injury to his client (ER
13 1.16(d), Rules 51(h) and (i)).

14 AGGRAVATING AND MITIGATIONG FACTORS

15 This Hearing Officer then considered aggravating and mitigating factors, pursuant to
16 Standards 9.22 and 9.32, respectively. There are three (3) factors are present in aggravation: (e)
17 bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules
18 or orders of the disciplinary agency; (g) refusal to acknowledge wrongful nature of conduct; and
19 (i) substantial experience in the practice of law. There are two (2) factors present in mitigation:
20 (a) absence of prior disciplinary record and (k) imposition of other penalties or sanctions.
21

22 PROPORTIONALITY REVIEW

23 In Matter of Rogers, Respondent was retained to handle a domestic relations matter.
24 After Respondent performed some legal services, the client reconciled with his wife, and
25 requested the unused portion of the retained. Thereafter, Respondent failed to abide by the
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1 client's decision concerning the objectives of his representation, failed to communicate with the
2 client, failed to keep the client reasonably informed as to the case status, failed to comply with
3 reasonable requests for information, an accounting, and a refund. Respondent was suspended for
4 one (1) year, placed on probation for two (2) years with the LOMAP and MAP programs, and
5 ordered to pay restitution for violating ERs 1.1, 1.3, 1.4, 8.4(d) and Rule 51(h) and (i).
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7 In Matter of MacDonald, Respondent failed to act with reasonable diligence and
8 promptness in representing domestic relations clients. Respondent failed to keep the clients
9 informed as to the status of the case and failed to respond to reasonable requests for information.
10 Additionally, Respondent was instructed by the court to file certain documents and failed to do
11 so. Further, failed to protect clients' interests and failed to surrender clients' papers in a timely
12 manner. Respondent initially failed to cooperate with the State Bar, but did so after the
13 Complaint was filed. Respondent was censured and had his probation extended for a period of
14 six (6) months for violating ERs 1.2, 1.3, 1.4, 1.16(d), 8.1(b), and Rule 51(h) and (i).
15

16 RECOMMENDATION

17 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and
18 deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is
19 also the objective of lawyer discipline to protect the public, the profession and the administration
20 of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill
21 public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
22 (1994).
23

24 In imposing discipline, it is appropriate to consider the facts of the case, the American
25 Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") and the
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1 proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286,
2 872 P.2d 1235, 1238 (1994).

3 Upon consideration of the facts, application of the *Standards*, including aggravating and
4 mitigation factors, and a proportionally analysis, this Hearing Officer recommends the following:

- 5
- 6 1. Respondent shall be suspended for a period of nine (9) months.
 - 7 2. No restitution is applicable in this case.
 - 8 3. Respondent shall pay the costs and expenses incurred in these disciplinary
9 proceedings.

10 DATED this 7th day of June, 2002.

11
12
13 Robert J. Lord
14 Robert J. Lord
Hearing Officer 6L

15 Original filed with the Disciplinary Clerk
16 this 7th day of June, 2002.

17 Copy of the foregoing mailed
18 this 7th day of June, 2002, to:

19 Clifford G. Cozier
20 Respondent
7430 East Caley Avenue, Suite 100
Englewood, CO 80111-4509

21 Robert A. Clancy, Jr.
22 Bar Counsel
23 State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, AZ 85003-1742

24 by: Patricia Segal
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27
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